

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
) 08-00213-01-CR-W-FJG
)
v.)
)
MICHAEL R. TOOMBS, JR.,)
)
)
)

MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE

PENDING CHARGE: On August 5, 2008, the Grand Jury returned a three count indictment against defendant Michael R. Toombs, Jr. Count One of the indictment charges that on or about June 23, 2008, defendant Toombs, aiding and abetting another, did knowingly take a motor vehicle from the person or presence of Chris Jackson, by means of force and violence or by intimidation, and at or during the time the defendant took said motor vehicle he intended to cause death or serious bodily injury. Count Two charges defendant Toombs with using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence, that is, the crime of carjacking. Count Three charges that on or about June 23, 2008, defendant Toombs, having been convicted of a crime punishable by imprisonment for a term exceeding one year, possessed a firearm, to wit, a Rohm, Model RG-38S, .38 caliber revolver.

The following matters were discussed and action taken during the pretrial conference:

TRIAL COUNSEL:

Government: Kathleen Mahoney
Case Agent: ATF Special Agent Theodore Horton
Defense: P.J. O'Connor

OUTSTANDING MOTIONS: None.

TRIAL WITNESSES:

Government: 12 witnesses with stipulations; 15 witnesses without stipulations
Defendant: No witnesses; the defendant may testify

TRIAL EXHIBITS:

Government: 20 exhibits
Defendant: No exhibits for the defendant

DEFENSES: General denial

POSSIBLE DISPOSITION:

(X) Definitely for trial; () Possibly for trial; () Likely a plea will be worked out

TRIAL TIME: 3 days

Government's case including jury selection: 2 ½ days

Defense case: ½ day

STIPULATIONS: Possible stipulations concerning the defendant's prior convictions, interstate nexus of the firearms and the chain of custody of evidence.

UNUSUAL QUESTIONS OF LAW: As of the date of the pretrial conference, the government had not given written notice of its intent to rely on 404(b) evidence¹. However, defense counsel indicated that he would oppose any effort by the government to rely on 404(b) evidence.

FILING DEADLINES:

Witness and Exhibit List

Government: Friday before the pretrial conference

Defense: Friday before the pretrial conference

Counsel are requested to list witnesses in alphabetical order on their witness list.

Exhibit Index, Voir Dire, Jury Instructions: Noon, Wednesday, December 3, 2008

Please Note: Jury instructions must comply with Local Rule 51.1

TRIAL SETTING: Criminal jury trial docket commencing December 8, 2008.

Please note: Government requests the second week of the docket due to the case agent being out of town during the first week of the docket.

IT IS SO ORDERED.

/s/ Sarah W. Hays

SARAH W. HAYS

UNITED STATES MAGISTRATE JUDGE

¹The Trial Order, doc. # 19, directed the government to provide written notice of all prior and subsequent acts and convictions intended to prove knowledge, intent or other elements identified in Rule 404(b) of the Federal Rules of Evidence no later than thirty days prior to trial.